

STATE OF MICHIGAN
COURT OF APPEALS

ESTATE OF MARY SINCLAIR,

Plaintiff-Appellant,

v

WILLIAM BEAUMONT HOSPITAL,

Defendant-Appellee,

and

NURSE JOHN DOE and ATTENDANT JANE
DOE,

Defendants.

UNPUBLISHED

December 18, 2003

No. 242485

Oakland Circuit Court

LC No. 02-038494-NH

Before: Fitzgerald, P.J., and Neff and White, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting defendant hospital's motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff's decedent fell and broke her hip while in the hospital recuperating from surgery. Plaintiff filed this action for damages two years and eight months later, asserting that defendants Doe negligently failed to supervise and restrain decedent. The trial court ruled that plaintiff's claim sounded in malpractice rather than ordinary negligence and was barred by the two-year limitations period. MCL 600.5805(5). We review the trial court's ruling on a motion for summary disposition de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). Whether a cause of action is barred by the statute of limitations is a question of law that is also reviewed de novo on appeal. *Ins Comm'r v Aageson Thibo Agency*, 226 Mich App 336, 340-341; 573 NW2d 637 (1997).

"The determination whether a claim will be held to the standards of proof and procedural requirements of a medical malpractice claim as opposed to an ordinary negligence claim depends on whether the facts allegedly raise issues that are within the common knowledge and experience of the jury or, alternatively, raise questions involving medical judgments." *Dorris v Detroit Osteopathic Hosp Corp*, 460 Mich 26, 46; 594 NW2d 455 (1999).

Claims regarding the negligent provision of medical services sound in malpractice whether they are against a hospital, a nurse, or other hospital employees because those entities fall within the ambit of MCL 600.5838a. *Bell v Mikkola*, 193 Mich App 708, 709-710; 485 NW2d 143 (1992); *Bronson v Sisters of Mercy Health Corp*, 175 Mich App 647, 650-652; 438 NW2d 276 (1989); *Whitney v Day*, 100 Mich App 707, 712; 300 NW2d 380 (1980).

When and under what circumstances a patient subject to bouts of dementia requires supervision is beyond the knowledge of the ordinary layman. In addition, because the physician's orders specified the use of restraints on an as-needed basis, the decision whether to restrain plaintiff's decedent at any given time involved the exercise of independent judgment also beyond the ken of the ordinary layman. *Dorris, supra* at 47; *Waatti v Marquette Gen Hosp, Inc*, 122 Mich App 44, 49; 329 NW2d 526 (1982); *Starr v Providence Hosp*, 109 Mich App 762, 766; 312 NW2d 152 (1981). Therefore, the trial court did not err in applying the two-year limitations period applicable to malpractice actions.

Plaintiff contends that the grant of summary disposition was premature because discovery was not complete. We disagree. All the evidence presented indicated that decedent's physician did not issue a standing order for use of restraints but ordered restraints on an as-needed basis and plaintiff presented no independent evidence indicating otherwise. Plaintiff therefore failed to establish that discovery was likely to produce evidence establishing a genuine issue of fact. *Bellows v Delaware McDonald's Corp*, 206 Mich App 555, 561; 522 NW2d 707 (1994).

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Janet T. Neff

/s/ Helene N. White